

LEGAL MEMORANDUM

To: Herrmann Law Group

From: Prof. Dr. Amad Sudiro, S.H., M.H., M.M., M.Kn.

Date: 2 June 2020

Subject: Settlement Funds for Minor Beneficiaries of a Lawsuit

A. Questions

1. Under Indonesian law, can the settlement funds for a minor beneficiary of a wrongful death lawsuit be transferred directly to the biological parent or legal guardian of the minor?
2. Must the biological parent or the appointed legal guardian manage the funds only for the benefit of the minor?
3. Is the attorney who conveys the funds to the parent or the guardian liable if the parent or guardian mismanages or misuses the fund?

B. Law Relied Upon

1. Act 23 of 2002 on Child Protection Jo. Act 35 of 2014 on the Amendment to Act 23 of 2002 on Child Protection. ("Child Protection Act").
2. Islamic Law Compilation ("KHI")
3. Act 1 of 1974 on Marriage Jo. Act 16 of 2019 on the Amendment to Act 1 of 1974 on Marriage ("Marriage Act")
4. Act 18 of 2003 on Advocate ("Advocate Act")

C. Answers and Analysis

1. **Answer:** In a wrongful death lawsuit, Indonesian law allows the settlement funds for the minor beneficiary to be transferred directly to the

biological parent or legally appointed guardian. Article 33-35 of Child Protection Act states such funds can be held and managed by the biological parent or a legally appointed guardian. Article 111 KHI is in agreement on this point.

- 2. Answer:** The fund belongs to the minor. Thus, the biological parent or appointed legal guardian shall be fully responsible in the administration and utilization of such funds only for the child's needs and benefit. This is repeatedly expressed in many laws, including Article 34 and Article 35 paragraph (2) Child Protection Act, Article 50 and Article 51 paragraph (3), (4), and (4) Marriage Act, and Article 110 and 112 KHI.

Further, the funds must be transferred to the child when they reach legal age. Article 50 Marriage Act states the legal age is 18 years or married, while the Islamic Code, Article 111 KHI, states it is 21 years or married.

- 3. Answer:** The attorney who conveys in good faith the funds to the biological parent or the appointed guardian is not liable if the parent or guardian mishandles or misuses the fund. Under Article 16 Advocate Act, the attorney is not subject to any lawsuit, civil or criminal, with respect to their professional duties when exercised in good faith.

Further, according to the Constitutional Court Decision No. 26/PUU-XI/2013, such advocate's immunity rights apply not only within the court but also beyond. "Advocate is not subject to any lawsuit, civil or criminal, with respect to their professional duties exercised in good faith when

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advocating for a Client within the court and anywhere else.” Thus, an attorney or advocate who conveys the fund to the biological parents or the appointed guardian shall be waived from any liability if the parents or the appointed guardian manage or misuse the minor’s fund.

SO DECLARED in Jakarta, Indonesia, this 21 day of July, 2020, under penalty of perjury under the laws of Indonesia and the United States of America.

Prof. Dr. Amad Sudiro, S.H., M.H., M.M., M.Kn.

I, **Anang Fahkcrudin**, a sworn and authorized translator, by virtue of Jakarta Capital Territory Governor’s Decree No. **2228/2011**, practicing in Jakarta, do solemnly and sincerely declare that the foregoing document is a true and faithful translation from Indonesian into English of the original version.

Jakarta, July 20, 2020

ANANG FAHKCRUDIN
SWORN & AUTHORIZED
TRANSLATOR
SK. GUB KDKI Jkt. NO. 2228/2011